

United States Senate

WASHINGTON, DC 20510

February 21, 2012

Federal Election Commission
Attn.: Ms. Caroline C. Hunter
Chairwoman
999 E Street NW
Washington, DC 20463

Re: Comments on Notice of Proposed Rulemaking, *Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations*, 76 FED. REG. 80803 (FEC Dec. 27, 2011).

Dear Chairwoman Hunter:

We write in response to the Federal Election Commission's Notice of Proposed Rulemaking (NPRM) on independent expenditures and electioneering communications by corporations and labor organizations following the Supreme Court's decision in *Citizens United v. FEC*, 130 S.Ct. 876 (2010).

Recent court decisions have significantly altered the landscape of campaign-related spending, and we support the Commission's efforts to provide the regulated community with clarity. Although the decision in *Citizens United* struck down limitations on corporate funding of independent expenditures and electioneering communications, the Supreme Court upheld all requirements related to disclaimers and disclosures by a decisive eight-to-one margin. We write in support of disclosure provisions set forth in the Federal Elections Campaign Act, and encourage the Commission to clearly articulate its expectations for compliance going forward.

We have already witnessed dramatically increased outside spending through the prevalence of Super PACs. With the 2012 presidential election still nine months away, 318 Super PACs have reported spending more than \$46 million on independent expenditures so far this cycle. During 2012, 10 Super PACs accounted for 72 percent of all such spending. This money primarily funds television advertisements, and American voters deserve to know who is funding these messages.

Given this new infusion of outside money into our political discourse, we urge the Commission to **use its rulemaking authority to implement broad disclosure and disclaimer requirements**. As the Supreme Court stated in *Citizens United*, "transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages."¹ Robust enforcement of these regulations is necessary to "insure that the voters are fully informed about the person or group who is speaking."²

¹ *Citizens United*, 130 S. Ct. 876, 916 (2010).

² *Id.* at 885 quoting from *Buckley v. Valeo*, 96 S. Ct. 612, 662 (1976).

Super PACs, and other “independent expenditures-only” organizations, cannot coordinate their activities with candidates and parties – they must act *independently* of candidates. Yet it has become clear during the 2012 presidential primaries that several Super PACs are raising unlimited contributions for the explicit purpose of supporting a specific candidate. Such contributions would be illegal if given directly to the candidate, and disclosure is crucial to discern whether these organizations are truly independent actors. **We also urge the Commission to closely monitor complaints to ensure that violations are swiftly penalized.**

We believe that comprehensive disclosure regulations are necessary to inform the electorate and hold the creators of political advertisements accountable. While the First Amendment guarantees the right of free speech, we must be sure that the corporate structure does not obscure the speaker. This is why we believe that **the identity of individual contributors should also be disclosed** when they make substantial donations to organizations financing independent expenditures.

One loophole that hinders transparency is the ability of donors to remain anonymous by giving to 501(c)(4) non-profit corporations, which then donate to Super PACs. Because 501(c)(4) organizations are not required to reveal their donor lists, we are concerned that money is being funneled through some of these organizations to deliberately avoid disclosure. **We urge you to explore this issue and consider rules requiring disclosure of donors whose money is then contributed to a Super PAC.**

In order to achieve clarity in the regulations, we ask the Commission to **precisely define the requirements for corporations and unions to minimize the possibility of misinterpretation or legal ambiguity.** The Commission should clearly define the new disclosure requirements in the post-*Citizens United* world of campaign-related spending.

The influx of money in this election cycle makes disclosure and disclaimer regulations absolutely essential to preserving free and fair elections. There is no decision more fundamental to our democracy than voters choosing which candidate will best represent their interests in government. We believe that the **American people should have timely access to relevant information as they evaluate candidates in local and federal elections**, including who is paying for political advertisements.

We appreciate the opportunity to submit these comments. Thank you for your consideration.

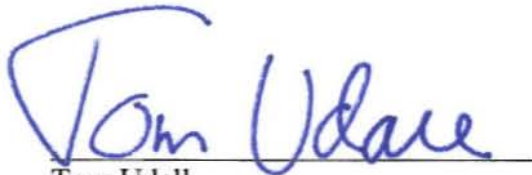
Sincerely,



Jeanne Shaheen
United States Senator



Al Franken
United States Senator



Tom Udall
United States Senator



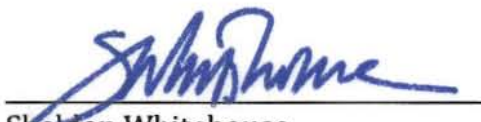
Jeff Merkley
United States Senator



Michael Bennet
United States Senator



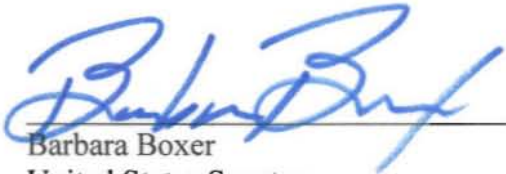
Charles Schumer
United States Senator



Sheldon Whitehouse
United States Senator



Sherrod Brown
United States Senator



Barbara Boxer
United States Senator



Bernie Sanders
United States Senator



Kirsten Gillibrand
United States Senator